

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN X. ACOSTA and INDIA WANEBO,

Plaintiff,

-against-

THE CITY OF NEW YORK; NYPD LIEUTENANT SCHMIDT; NYPD OFFICER STEVEN HOLGUIN; NYPD CAPTAIN RONALD RAMOS; NYPD OFFICER JASON LOPEZ; NYPD OFFICER ORVIN FELICIANO; NYPD OFFICER IVAN LUGO; NYPD OFFICER FRANK GREEN; NYPD OFFICER KRISTOPHER ERICKSON; NYPD SERGEANT JOSEPH SPALDING; NYPD LIEUTENANT DAVID VASQUEZ; NYPD OFFICER PRINCE O'CONNOR; NYPD CAPTAIN HECTOR BARIAS; AND NYPD OFFICER SYLWIA NOACKI,

Defendants.

**RULE 68
OFFER OF JUDGMENT**

22-CV-0576 (FB) (RER)

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendants, and any defendant who is currently or subsequently named and hereafter represented by the Office of the Corporation Counsel in this action, hereby offer to allow plaintiff John X. Acosta to take a judgment against the City of New York in this action for the total sum of Fifteen Thousand and One (\$15,001.00) Dollars, plus reasonable attorneys' fees, expenses, and costs to the date of this offer for plaintiff's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted by written notice within 14 days after being served.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by defendants or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiff arising out of the facts and circumstances that are the subject of this action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff John X. Acosta agrees that payment of Fifteen Thousand and One (\$15,001.00) Dollars within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If plaintiff John X. Acosta is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to counsel for defendants a final demand letter from Medicare.

By acceptance of this Rule 68 Offer of Judgment, plaintiff John X. Acosta agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C.

§ 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiff John X. Acosta further agrees to hold harmless defendants and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
September 26, 2023

HON. SYLVIA O. HINDS-RADIX
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By



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To: **VIA FIRST CLASS AND ELECTRONIC MAIL**
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